Supreme Court of the United States

OCTOBER TERM, 1969

No. 1251

PORT OF BOSTON MARINE TERMINAL ASSOCIATION, INC., ET AL., PETITIONERS

vs.

REDERIAKTIEBOLAGET TRANSATLANTIC

VOLUME II (EXHIBITS)

Petition for Certiorari Filed February 27, 1970
Certiorari Granted April 20, 1970

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1. *Federal Maritime Commission*
Agreement No. 8785

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FEDERAL MARITIME COMMISSION
Agreement No. 8785

Port of Boston Marine Terminal Association

This is an agreement entered into at Boston, Massachusetts, on February 26, 1962, under Section 15 of Shipping Act of 1916 (as amended) by and among the Marine Terminal Operators of the Port of Boston, Massachusetts relative to rates of and charges by the parties for furnishing wharfage, dock, and other terminal facilities in the Port of Boston in connection with common carriers by water as defined in the Shipping Act, 1916 (46 U.S.C. sec. 801 *et seq.*). Upon becoming effective, this agreement supersedes the previous memorandum of cooperative working arrangement by and among the parties (FMB No. 8365).

The parties have associated themselves into an association known as Port of Boston Marine Terminal Association (hereinafter called the "Association") and severally agree as follows:

FIRST:

Each party represents that it is an owner or operator of a marine terminal at Boston, Massachusetts, and as such, furnishes wharfage, dock, or other terminal facilities in connection with common carriers by water at the Port of Boston.

Each party also represents that if it ceases to be an owner or operator of a marine terminal at Boston, Massachusetts, it shall forthwith cease to be a party to this agreement but shall remain liable for any dues or assessments outstanding against it. Prompt notice of such change in status shall be given to the Association, which shall promptly notify the Governmental Agency charged with the administration of the Shipping Act of 1916, as amended, (hereinafter referred to as the "Agency").

SECOND:

This agreement and any amendments or modifications thereof are subject to the approval of the Agency in accordance with the provisions of Section 15 of the Shipping Act, 1916, (as amended), and shall not become effective until approved by the Agency. Upon such approval this agreement shall supersede the memorandum of cooperative working arrangements hereinabove referred to.

THIRD:

This agreement shall cover the following subject matters and all services, facilities, rates, and charges incidental thereto:—wharfage, dockage, free time, wharf demurrage, usage charges, passenger charges, water, electricity.

FOURTH:

The parties hereto shall elect from their membership by a majority vote of the entire membership a Chairman, a Vice-Chairman, and a Treasurer. These officers shall be

the officers of the Association and shall serve without compensation for one year or until their successors have been duly elected and installed in office. It shall be the duty of the Chairman to preside at all meetings of the Association. In the absence of the Chairman or in case of his incapacity it will be the duty of the Vice-Chairman to perform the duties of the Chairman.

The parties hereto may by a majority vote of the entire membership employ an Executive Secretary who under the supervision of the Association Chairman, shall perform such duties as the Association may direct.

FIFTH:

Association meetings shall be held at the request of the Chairman or any two (2) members at places, dates, and hours to be mutually agreed upon by the parties hereto from time to time. All actions under this agreement shall be by a majority vote of the members, except as otherwise specifically provided in the agreement. A quorum at all meetings of the Association shall consist of two-thirds of the members.

SIXTH:

The parties hereto agree that their respective tariffs, rates, charges, classifications, rules and regulations, and additions thereto and changes therein, adopted pursuant to this agreement and covering the subject matter referred to in Article Third shall be filed promptly with the Agency. They further agree that no changes in said tariffs, rates, charges, classifications, and rules and regulations shall be made without prior notice of such changes to members of the Association, who shall be afforded an opportunity for consultation and for the making of such exceptions as they may desire in the tariff rates, charges, classifications, and rules and regulations, with the understanding that the party

proposing a change reserves the right to make it effective at its own wharves or piers regardless of the action of the other parties hereto, but not earlier than forty days after notice of the prior notice hereinabove referred to.

No change governed by this Article Sixth shall become effective until after thirty days' notice to the public unless good cause exists for a change on shorter notice. The reasons for such shorter notice shall be forwarded to the Agency. Without withdrawing, any party may except itself from the application of this agreement with respect to one or more of the items set forth in Article Third, provided that written notice of such intention is given at least sixty days in advance of the intended date of the exception to the Chairman.

A copy of such intended exception shall be dispatched promptly by the Association to the Agency.

SEVENTH:

Each of the parties hereto agrees to adhere to the rates, tariffs, charges, classifications, and rules and regulations published by the Association covering the subject matter described in Article Third. No party to this agreement shall deviate therefrom except as provided herein directly or indirectly, and no rates or charges assessed or collected pursuant thereto shall be directly or indirectly refunded or remitted.

EIGHTH:

Any person, firm, or corporation meeting the qualifications set forth in Article First, or giving substantial and reliable evidence of its intention to meet such qualifications, may become a member of this Association upon the approval of two-thirds of the parties hereto, by affixing its signature to this agreement, or a counterpart thereof. No admission to membership shall become effective prior to the date of written advice thereof to the Agency.

Every application for membership shall be acted upon promptly. No applicant shall be denied admission except for just and reasonable cause, and advice of any denial of admission to membership, together with a statement of the reasons therefor, shall be furnished promptly to the Agency.

NINTH:

Any expense incurred in carrying out this agreement shall be prorated among the parties hereto as they shall from time to time determine.

TENTH:

Any party hereto shall have the right to withdraw from this agreement provided that written notice of such withdrawal is given at least sixty days in advance of the intended date of withdrawal to the Chairman. During the period before the effective date of withdrawal the withdrawing party agrees to be bound by all of the provisions of this agreement. A withdrawing party also shall remain liable for all dues or assessments outstanding against it.

ELEVENTH:

The invalidations, nullification, alteration, limitation, modification, change or amendment of any part or provision of this agreement shall not affect the validity of any other part or provision hereof.

TWELFTH:

This agreement may be executed in as many original counterparts as desired and shall be binding upon such party, his or their heirs, executors, administrators, successors, or assigns. In the event the agreement is assigned to the successors or assigns of any of the parties, notice thereof, together with copy of the assignment agreement, shall be filed with the Agency.

THIRTEENTH:

Nothing contained in this agreement shall interfere with the right of any party under the provisions of the Shipping Act, 1916, (as amended), or the jurisdiction of the Agency.

FOURTEENTH:

This agreement may be amended by a two-thirds unanimous vote of the parties hereto. However, no such amendment shall be made effective until filed and approved by the Agency.

FIFTEENTH:

This agreement shall be executed in triplicate, two (2) copies to be filed with the Agency, Washington, D. C., and one copy to be held by the Association.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their respective officers or agents thereunto duly authorized the day and year herein first indicated.

MASSACHUSETTS PORT AUTHORITY (Maritime Division)

By (Sgd.) Joseph J. Connolly
Title Supt. of Terminals (M.P.A.)

THE MYSTIC TERMINAL COMPANY
By (Sgd.) P. J. Mullaney Title Pres.

TERMINAL OPERATORS, INC.
By (Sgd.) J. L. Haskell Title Gen. Mgr.

WIGGIN TERMINALS, INC.
By (Sgd.) Sherman L. Whipple Title Pres.

NEW YORK CENTRAL SYSTEM (BOSTON & ALBANY DIVISION)
By (Sgd.) Warren H. White Title N.E.F.S.M.

2. Port of Boston Marine Terminal Association—
Terminal Tariff No. 1
Exhibit B to Petition for Declaratory Judgment
(Appendix, Vol. I, p. 12)
Exhibit C to Affidavit of Sherman L. Whipple
(Appendix, Vol. I, p. 20)

TERMINAL TARIFF No. 1

REGULATIONS AND CHARGES

OF THE

TERMINAL OPERATORS NAMED HEREIN

Issued by

Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: –
December 21, 1964

Effective: –
January 21, 1965

If additional copies of this tariff are requested they may be obtained by sending $1.00 per copy to the above issuing agent.

Original Title Page

F.M.C. T-No. 1

Cancels: –

F.M.B. T-No. 2 (The Mystic Terminal Co.)
F.M.B. T-No. 3 (Wiggin Terminals, Inc.)
F.M.B. T-No. 1 (Terminal Operators, Inc.)
F.M.B. F-No. 7 (The New York Central Railroad Co.)
Tariff No. PEC 12, F.M.B. No. 1 (Massachusetts Port Authority)

PORT OF BOSTON

MARINE TERMINAL ASSOCIATION

FEDERAL MARITIME COMMISSION AGREEMENT No. 8785

TERMINAL TARIFF No. 1

REGULATIONS AND CHARGES

OF THE

TERMINAL OPERATORS NAMED HEREIN

Issued by

Sherman L. Whipple
Chairman
50 Terminal Street
Boston,29, Mass.

Issued: –

June 15, 1962

Effective: –

July 1, 1962

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F.M.C. T-No. 1
(Cancels Original Page No. 1)

PARTICIPATING TERMINAL OPERATORS

NAME	ADDRESS	ZIP CODE NO.
MASSACHUSETTS PORT AUTHORITY (MARITIME DIVISION)	COMMONWEALTH PIER No. 5 BOSTON, MASSACHUSETTS	02210
NEW YORK CENTRAL SYSTEM (BOSTON AND ALBANY DISTRICT)	PIERS NOS. 1, 3, 4, 5 EAST BOSTON, MASSACHUSETTS	02128
*PORT TERMINALS, INC.	BOSTON ARMY BASE TERMINAL 666 SUMMER STREET BOSTON, MASSACHUSETTS	02210
THE MYSTIC TERMINAL COMPANY (SUBSIDIARY BOSTON & MAINE RAILROAD)	HOOSAC PIER No. 1 MYSTIC PIER No. 1 WATER STREET BOSTON, MASSACHUSETTS	02129
WIGGIN TERMINALS, INC.	CASTLE ISLAND TERMINAL PIER 51 50 TERMINAL STREET BOSTON, MASSACHUSETTS	02129

Issued: –
December 21, 1964

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Massachusetts

Effective: –
January 21, 1965

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PARTICIPATING TERMINAL OPERATORS

NAME	ADDRESS
MASSACHUSETTS PORT AUTHORITY (MARITIME DIVISION)	COMMONWEALTH PIER No. 5 BOSTON 10, MASSACHUSETTS
NEW YORK CENTRAL RAILROAD CO. (BOSTON AND ALBANY DISTRICT)	PIER Nos. 1, 3, 4, 5 EAST BOSTON 28, MASSACHUSETTS
TERMINAL OPERATORS, INC.	BOSTON ARMY BASE TERMINAL 666 SUMMER STREET BOSTON 10, MASSACHUSETTS
THE MYSTIC TERMINAL COMPANY (SUBSIDIARY BOSTON & MAINE RAILROAD)	HOOSAC PIER No. 1 & MYSTIC PIER No. WATER STREET BOSTON 29, MASSACHUSETTS
WIGGIN TERMINALS, INC.	CASTLE ISLAND TERMINAL & PIER 51 50 TERMINAL STREET BOSTON 29, MASSACHUSETTS

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Boston 29, Mass.

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DEFINITION OF TERMS USED IN THIS TARIFF

1 – The Term Cargo refers to merchandise to be loaded on or discharged from a vessel.

2 – The Term Dockage refers to the charge assessed against the vessel for the service of providing space alongside of wharf, pier, or seawall structure for the docking or berthing of water craft, or for the mooring thereof, or other water craft so docked.

3 – The Term Free Time refers to the period during which cargo is allowed to remain on a pier free of charge, immediately prior to the loading of the vessel or subsequent to its discharge from a vessel.

4 – The Term Legal Holidays as used in this tariff means the following: –

New Year's Day	(January 1)
Washington's Birthday	(February 22)
Patriots' Day	(April 19)
Memorial Day	(May 30)
Bunker Hill Day	(June 17)
Independence Day	(July 4)
Labor Day	(First Monday in September)
Columbus Day	(October 12)
Veterans' Day	(November 11)
Thanksgiving Day	(Last Thursday in November)
Christmas Day	(December 25)

Or any day celebrated in lieu thereof.

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DEFINITIONS (CONTINUED)

5	–	The Term Person	refers to vessels, agents, owners, masters, operators; includes but is not limited to natural persons, artificial persons, corporations, partnerships, organizations and associations; to sovereigns, governments, nations, states, municipalities, and agents and/or instrumentalities thereof.
6	–	The Term Pier or Wharf	refers to a facility operated by any of the participating members named in this tariff.
7	–	The Term Terminal	refers to the operator of the pier.
*8	–	The Term Wharfage	refers to the charge assessed against all cargo passing or conveyed over, onto, or under wharves or between vessels or overside vessels when berthed at pier or wharf or when moored in slip adjacent to pier or wharf. Wharfage is solely the charge for use of pier or wharf and does not include charge for any other service.
*9	–	The Term Wharf Demurrage	refers to the charge assessed against cargo remaining on a pier or wharf after the expiration of free time.
*10	–	The Term Vessel	refers to floating craft of every description, and includes the owner and/or operator and/or such other persons acting as agent thereof, and they shall be jointly and severally responsible for the payment of all charges accrued by the vessel.

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Boston, Mass. 02129

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January 21, 1965

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5 – The Term Per

)EFINITIONS (CONTINUED)

on	refers to vessels, agents, owners, masters, operators; includes but is not limited to natural persons, artificial persons, corporations, partnerships, organizations and associations; to sovereigns, governments, nations, states, municipalities, and agents and/or instrumentalities thereof.
6 – The Term Pie	
7 – The Term Te or Wharf	refers to a facility operated by any of the participating members named in this tariff.
8 – The Term Wl	
minal	refers to the operator of the pier.
arfage	refers to the charge assessed against cargo relating to all cargo passing or conveyed over, onto, or under wharves or between vessels or overside vessels when berthed at pier or wharf or when moored in slip adjacent to pier or wharf. Wharfage is solely the charge for use of pier or wharf and does not include charges for any other service.
9 – The Term W	
10 – The Term V	
arf Demurrage	refers to the charge levied against cargo remaining on a pier or wharf after the expiration of free time.
sel	refers to and includes the owner and/or operator of the vessel or such other persons acting as agent thereof, and they shall be jointly and severally responsible for the payment of all charges accrued by the vessel.

Issued:–

June 15, 1962

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July 1, 1962

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DEFINITIONS (CONTINUED)

11 – Symbols listed below are to denote changes when amendments to this tariff are issued: –

+	Increase
–	Decrease
*	Change in wording, resulting in neither increase nor decrease.
**	New Item
***	Deletion

Where substantially all items on a page are increased or decreased, it shall be so stated at the top of the page. Any exceptions will be marked by a dot ". ".

**12 – STRIKE STORAGE

Refers to the charge assessed against cargo on the pier at the commencement of a strike which prevents receipt or delivery of cargo.

13 – Intentionally left blank.

14 – Intentionally left blank.

15 – Abbreviations: –

Lbs.	=	Pounds
Ft.	=	Feet
KWH	=	Kilowatt Hour
Sq.	=	Square
N.C.	=	No Charge

Issued: –
November 18, 1964

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Effective: –
December 18, 1964

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DEFINITIONS (CONTINUED)

11 – Symbols listed below are to denote changes when amendments to this tariff are issued.

+	Increase
–	Decrease
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**	New item
***	Deletion

Where substantially all items on a page are increased or decreased, it shall be so stated at the top of the page. Any exceptions will be marked by a dot ". ".

12 – Intentionally left blank.

13 – Intentionally left blank.

14 – Intentionally left blank.

15 – Abbreviations: –

Lbs.	Pounds
Ft.	Feet
KWH	Kilowatt Hour
Sq.	Square
N.C.	No Charge

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Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

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June 15, 1962

Effective: –
July 1, 1962

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RULES AND REGULATIONS

Item 1 – ACCEPTANCE OF RULES AND REGULATIONS

A – The use of a pier or wharf or any facility thereof by any person constitutes full acceptance of the rates, rules, terms, and conditions stated herein, or such other rules and conditions which may be issued by the Terminal at any time.

*B – In the event that any action required under this Tariff is not taken by the person responsible therefor, the Terminal shall have the right to take such action on its own behalf, and the cost thereof shall become the obligation of the person initially responsible therefor.

Item 2 – APPLICATION FOR BERTHS AND BERTH ASSIGNMENTS

A – All vessels desiring a berth at a pier or wharf operated by a Terminal, shall, as far in advance of the date of docking as possible, make application therefore to the Terminal specifying the estimated date and time of arrival and/or sailing, also the nature and quantity of cargo.

B – Bulk Cargo Berths – Army Base

1 – Berths 6 and 10 are designated bulk cargo berths, and vessels that have bulk cargo to load or discharge will be assigned to these berths. Bulk cargo will not be loaded or discharged at other berths except by direction of the Terminal.

2 – One gantry crane is assigned to each of the bulk cargo berths.

3 – Vessels will be assigned to Berths 6 and 10 in order of their arrival in the port, provided they are ready to load or discharge with sufficient cargo available.

(Item 2 continued on next page)

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Boston, Mass. 02129

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RULES AND REGULATIONS

Item 1 – ACCEPTANCE OF RULES AND REGULATIONS

A – The use of a pier or wharf or any facility thereof by any person constitutes full acceptance of the rates, rules, terms, and conditions stated herein, or such other rules and conditions which may be issued by the Terminal at any time.

B – In the event that any action required under this tariff is not taken by the owner or person responsible therefor, the Terminal shall have the right to take such action on its own behalf, and the cost thereof shall become the obligation of the vessel or person initially responsible therefor.

Item 2 – APPLICATION FOR BERTHS AND BERTH ASSIGNMENTS

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(Item 2 continued on next page)

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Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

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June 15, 1962

Effective: –
July 1, 1962

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RULES AND REGULATIONS (CONTINUED)

Item 2 – APPLICATION FOR BERTHS AND BERTH ASSIGNMENTS (Continued)

4 – Arrival of vessels at the port is determined by the time entered in the log of the Boston Pilots when vessel is boarded by a Pilot; or if no pilot is used, the time vessel is logged as passing the outer Pilot Station.

C – Grain Cargo Berths – Hoosac Pier No. 1, Berth 3
East Boston Pier No. 4, East Side

1 – Except as otherwise provided in these rules, grain vessels will be assigned available berths at Hoosac Pier, Berth 3, and East Boston Pier 4, East Side, to load grain from Grain Elevator in the order of arrivals and after issuance of certificate of readiness by the port representatives of the National Cargo Bureau, Inc., provided that quantity, kind, quality, and grade of grain is in the custody of the elevator; and further, that all Governmental regulations covering the handling and shipment of grain for export have been complied with.

2 – In order to expedite the movement of grain vessels and to secure the fullest possible use of the grain handling facilities in the port, whenever there are one or more grain vessels in port, in addition to a grain vessel on berth, ready and waiting to load, the grain vessel on berth will be required to work overtime at vessel's expense, if necessary, to make berth available. Any grain vessel on berth which refuses to work overtime will forfeit its right to the berth and shall vacate the berth on order of the Terminal.

(Item 2 continued on next page)

Issued: –
June 15, 1962

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Effective: –
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RULES AND REGULATIONS (CONTINUED)

Item 2 – APPLICATION FOR BERTHS AND BERTH ASSIGNMENTS (Continued)

D – Preferential assignment will be extended to all passenger vessels embarking or disembarking passengers at Commonwealth Pier No. 5

E – Whenever necessary for the proper operation of a pier, and/or its facilities, a Terminal may order a vessel to move to such place as the Terminal directs at the expense of the vessel.

Item 3 – RESPONSIBILITY FOR LOSS OR DAMAGE

A – The Terminal, its officers, agents, or employees, shall not be responsible for loss or damage by whomsoever caused to vessels, persons; or to cargo or any other property in or upon, or moving or being moved over, in, through, or under any wharf or other structure or property owned, controlled, or operated by the Terminal, resulting from any cause whatsoever, including but not limited to loss or damage which in any manner is caused by or results from the following: – theft, pilferage, animals, including rats, mice and other rodents; birds, insects, including moths and weevil; shrinkage, wastage, seepage, leaking containers; heating; evaporation; fire, or extinguishment thereof; explosion; leakage; discharge from fire protection system; dampness, rain; floods, freezing, frost or other action of the elements or acts of God; collapse of walls, piers, or other structures; breakdown of plant, machinery or equipment; floats, logs, or piling required to breast vessels away from wharves; sabotage, insurrection, revolution or war; riot; or strikes, or any combination of the foregoing.

B – The rates contained herein do not include insurance of any kind. Insurance should be procured by the interested party.

Issued: –
June 15, 1962

Issued by
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Effective: –
July 1, 1962

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RULES AND REGULATIONS (CONTINUED)

Item 2 – APPLICATION FOR BERTHS AND BERTH ASSIGNMENTS (Continued)

D – Preferential assignment will be extended to all passenger vessels embarking or disembarking passengers at Commonwealth Pier No. 5.

E – Whenever necessary for the proper operation of a pier, and/or its facilities, a Terminal may order a vessel to move to such place as the Terminal directs at the expense of the vessel.

Item 3 – RESPONSIBILITY FOR LOSS OR DAMAGE

A – The Terminal, its officers, agents, or employees, shall not be responsible for loss or damage by whomsoever caused to vessels, persons; or to cargo or any other property in or upon, or moving or being moved over, in, through, or under any wharf or other structure or property owned, controlled, or operated by the Terminal, resulting from any cause whatsoever, including but not limited to loss or damage which in any manner is caused by or results from the following: – theft, pilferage, animals, including rats, mice and other rodents; birds, insects, including moths and weevil; shrinkage, wastage, seepage, leaking containers; heating; evaporation; fire, or extinguishment thereof; explosion; leakage, discharge from fire protection system; dampness, rain; floods, freezing, frost or other action of the elements or acts of God; collapse of walls, piers, or other structures; breakdown of plant, machinery or equipment; floats, logs, or piling required to breast vessels away from wharves; sabotage, insurrection, revolution or war; riot; or strikes, or any combination of the foregoing.

B – The rates contained herein do not include insurance of any kind. Insurance should be procured by the interested party.

Issued: –
June 15, 1962

Issued by
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Effective: –
July 1, 1962

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RULES AND REGULATIONS (CONTINUED)

em 4 – EXPLOSIVES AND DANGEROUS OR OBNOXIOUS CARGOES

A – No gunpowder, explosives, or dangerous or obnoxious cargoes shall be discharged or loaded upon the piers, or structures, or vessels at the piers, except by permission of the Terminal.

B – The handling of explosives and other dangerous articles is subject to all applicable laws, rules and regulations promulgated by The United States of America, The Commonwealth of Massachusetts, The City of Boston, and other competent and proper authorities.

C – If handling is permitted, cargo of RED or YELLOW designation, or acids, corrosive liquids, or poisons, whether designated or not by label. for loading to vessel, shall not be allowed on piers until the day of the vessel's sailing and the Terminal Superintendent shall be notified in advance of receiving, in order that a suitable location may be designated for place of rest pending loading. Inbound, such cargo shall be removed from the pier forthwith on the day it is discharged.

D – The Terminal may require the vessel or owner of cargo to employ special watchmen at the expense of the vessel or owner of the cargo, to watch any dangerous cargo on the pier, when in the judgment of the Terminal such action is necessary to protect the property and cargoes against fire or other hazards until the condition is eliminated.

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RULES AND REGULATIONS (CONTINUED)

Item 5 – MOVEMENT OF CARGO

The Terminal may move cargo from pier facilities to safeguard life and property, at the risk and expense of the vessel, or cargo.

Item 6 – ACCESS TO SHIPPING RECORDS

The vessel will be required to allow the Terminal or its agents to have access to the manifest of cargo, loading list, or other transportation documents at the time the vessel starts loading or discharging, or prior to that time if available, for the purpose of supervising the proper use of the pier, and obtaining the data necessary to permit the correct determination of charges.

Item 7 – LIMITING WEIGHTS

Cargo shall be stacked or piled on the piers or pier aprons so as to produce a uniform loading for the area covered, no greater than the load limits as prescribed by the Terminal.

*A – Wiggin Terminals, Inc., Castle Island and Pier 51, no greater than 500 lbs. per sq. ft.

B – Massachusetts Port Authority (Maritime Division):
Commonwealth Pier No. 5, no greater than 500 lbs. per sq. ft., first floor; and 300 lbs. per sq. ft. on 2nd floor

*C – Port Terminals, Inc., Boston Army Base, wharf aprons, 500 lbs. per sq. ft.; wharf shed, first floor, 600 lbs. per sq. ft.; second floor, 400 lbs. per sq. ft.; pier sheds, first floor, 500 lbs. per sq. ft.; second and third floors, 300 lbs. per sq. ft.

D – Sling loads using the cargo masts of the Boston Army Base Terminal should not exceed 4,000 lbs.; at Commonwealth Pier No. 5 – 6,000 lbs.

E – Mystic Terminal Co., Hoosac Pier No. 1 and Mystic Pier No. 1, 600 lbs. per sq. ft.

F – New York Central System (Boston and Albany District) Pier No. 1, 500 lbs. per sq. ft.; Piers Nos. 3 and 4, 500 lbs. per sq. ft.

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: – December 21, 1964

Effective: – January 21, 1965

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Original Page No. 10
F.M.C. T-No. 1

RULES AND REGULATIONS (CONTINUED)

Item 5 – MOVEMENT OF CARGO

The Terminal may move cargo from pier facilities to safeguard life and property, at the risk and expense of the vessel, or cargo.

Item 6 – ACCESS TO SHIPPING RECORDS

The vessel will be required to allow the Terminal or its agents to have access to the manifests of cargo, loading list, or other transportation documents at the time the vessel starts loading or discharging, or prior to that time if available, for the purpose of supervising the proper use of the pier, and obtaining the data necessary to permit the correct determination of charges.

Item 7 – LIMITING WEIGHTS

Cargo shall be stacked or piled on the piers or pier aprons so as to produce a uniform loading for the area covered, no greater than the load limits as prescribed by the Terminal.

A – Wiggins Terminals, Inc., no greater than 500 lbs. per sq. ft.

B – Massachusetts Port Authority (Maritime Division) Commonwealth Pier No. 5, no greater than 500 lbs. per sq. ft., first floor; and 300 lbs. per sq. ft. on 2nd floor.

C – Terminal Operators, Inc., wharf aprons, 500 lbs. per sq. ft.; wharf shed, first floor, 600 lbs. per sq. ft.; second floor, 400 lbs. per sq. ft.; pier sheds, first floor, 500 lbs. per sq. ft.; second and third floors, 300 lbs. per sq. ft.

D – Sling loads using the cargo masts of the Boston Army Base Terminal should not exceed 4,000 lbs.; at Commonwealth Pier No. 5 – 6,000 lbs.

E – Mystic Terminal Co., Hoosac Pier No. 1 and Mystic Pier No. 1, 600 lbs. per sq. ft.

F – New York Central Railroad Co. (Boston and Albany District) Pier No. 1, 500 lbs. per sq. ft., Piers Nos. 3 and 4, 500 lbs. per sq. ft.

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Issued: –
June 15, 1962

Effective: –
July 1, 1962

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RULES AND REGULATIONS (CONTINUED)

Item 8 – DISPOSITION OF CARGO

A – The Terminal may require the vessel to refuse delivery or loading of cargo until all Terminal charges have been paid.

B – The Terminal reserves the right at their option to require the vessel to store in public warehouse or move to another location on the pier, at the entire risk and expense of the vessel or owner, all cargo which is not removed at the expiration of the prescribed free time. The Terminal is to have a lien on such cargo in the warehouse for all Terminal charges due.

Item 9 – ABANDONED CARGO

If cargo (such as damaged or unsaleable cargo) is abandoned and left upon the pier, the vessel will be responsible for removal of such cargo at its own expense, and for reimbursement to the Terminal if any wharfage, wharf demurrage or other charges have accumulated.

Item 10– DUNNAGE AND RUBBISH

A – If dunnage material, packaging material, wires, bands, or refuse of any kind, have accumulated on the pier, the vessel will be held responsible for the prompt removal of such material immediately at the completion of stevedoring operations, and such removal is to be at its own expense. If such requirement is not promptly complied with, the Terminal will immediately remove such material, and the expense incurred will be charged to the vessel.

B – Any claims for injury to persons, or damage to material or equipment because of such packaging material, wires, bands, or refuse of any kind accumulating on the pier, shall be the responsibility of the vessel.

Issued by
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Chairman
50 Terminal Street
Boston 29, Mass.

Issued: –
June 15, 1962

Effective: –
July 1, 1962

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F.M.C. T-No. 1

RULES AND REGULATIONS (CONTINUED)

Item 11 – USE OF PREMISES

A – Vessels when moored to the pier shall have on board at all times sufficient personnel to move said vessel in case of necessity for the protection of the vessel and/or other property.

B – Representatives of the vessel, and all persons having business with it, shall not be allowed to park automobiles on the premises without express permission from the Terminal. When such permission is granted, parking shall be entirely at the risk of the owner and/or operator.

C – No Smoking shall be allowed on any pier, except in approved areas or locations specifically designated for that purpose on the pier or areas adjacent thereto. Persons violating this rule may be barred, at the discretion of the Terminal, from the further use of any pier or area adjacent thereto, and in addition, shall be subject to prosecution under the applicable Federal, State, and Municipal laws.

D – The vessel shall handle cargo and equipment so there shall be at all times: –

1 – A minimum area of four feet (4 ft.) on all sides of fire hydrants, fire alarm boxes, and fire-fighting equipment kept free, unobstructed, and with direct access.

2 – Free, unobstructed, and direct access to all buildings, and fire hydrants by the City of Boston or Terminal fire equipment.

3 – Free and unobstructed operation of automatically closing fire-doors.

4 – Two feet (2 ft.) aisle space between all cargo and sidewalls, bulkheads, partitions, doors, windows, or any parts of the premises; to prevent damage, and to comply with the regulations of the U. S. Coast Guard, Boston Fire Department, and other regulatory agencies.

(Item 11 continued on next page)

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Issued: –
June 15, 1962

Effective: –
July 1, 1962

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First Revised Page No. 13
F.M.C. T-No. 1
(Cancels Original Page No. 13)

RULES AND REGULATIONS (CONTINUED)

Item 11 – USE OF PREMISES (Continued)

5 – Cargo piled so as not to exceed the floor load limits as prescribed in Item 7.

E – Vessels and other users of the facilities shall confine their operations to the area designated by the Terminal.

Item 12 – DAMAGE TO TERMINAL PROPERTY

In the event any damage is done to Terminal property, the person or persons responsible for causing said damage, or any way involved, shall give a full report to the Terminal, giving the date and hour the damage occurred, names and addresses or description of witnesses or other persons, vessels, vehicles, or instrumentalities involved, as well as any other pertinent facts and information which may be available. The person causing the damage will be held responsible for reimbursing the Terminal for the cost of repairing said damage.

Item 13 – CARGO AVAILABLE FOR DELIVERY

The vessel shall be responsible for making cargo on the pier available for delivery to consignee or vessel. When it becomes necessary to move, sort, break down, or high pile cargo to make it available for delivery, this shall be done at the expense of the vessel.

Item 14 – FREE TIME

*A – Inward Cargo

1 – Cargo, not otherwise specified, unloaded from vessel, may remain on the pier or location assigned by the Terminal for five (5) days after the vessel completes discharging without wharf demurrage charges. (See Exception)

(Item 14 continued on next page)

RULES AND REGULATIONS (CONTINUED)

Item 11 – USE OF PREMISES (Continued)

5 – Cargo piled so as not to exceed the floor load limits as prescribed by Item 7.

E – Vessels and other users of the facilities shall confine their operations to the area designated by the Terminal.

Item 12 – DAMAGE TO TERMINAL PROPERTY

In the event any damage is done to Terminal property, the person or persons responsible for causing said damage, or any way involved, shall give a full report to the Terminal, giving the date and hour the damage occurred, names and addresses or descriptions of witnesses or other persons, vessels, vehicles, or instrumentalities involved, as well as any other pertinent facts and information which may be available. The person causing the damage will be held responsible for reimbursing the Terminal for the cost of repairing said damage.

Item 13 – CARGO AVAILABLE FOR DELIVERY

The vessel shall be responsible for making cargo on the pier available for delivery to consignee or vessel. When it becomes necessary to move, sort, break down, or high pile cargo to make it available for delivery, this shall be done at the expense of the vessel.

Item 14 – FREE TIME

A – Import Cargo

1 – Cargo, not otherwise specified, unloaded from vessel, may remain on the pier or location assigned by the Terminal for five (5) days after the vessel completes discharging without wharf demurrage charges. (See Exception)

(Item 14 continued on next page)

Issued: –
June 15, 1962

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Effective: –
July 1, 1962

Second Revised Page No. 14
F.M.C. T-No. 1
(Cancels First Revised Page No. 14)

RULES AND REGULATIONS (CONTINUED)

Item 14 – FREE TIME (Continued)

Exception:

Woodpulp, when unloaded from vessels at Mystic and Hoosac, Pier 51, and New York Central Terminals, and when inland movement from pier is by rail, may remain on the pier for fifteen (15) days after the vessel completes discharging without wharf demurrage charges.

*B – Outward Cargo:

Cargo may be assembled on the pier for movement to foreign or domestic ports free of wharf demurrage charges for seven (7) days before the vessel commences to load.

*C – Free time will be computed from 8:00 A.M., on the first day after vessel completes discharge, or from 8:00 A.M., on the first day after cargo arrives for delivery to vessel. In computing free time, Saturdays, Sundays, legal holidays (Item 4, Section I), and strike storage days (Page 20, Item 11), will be excluded. When a holiday falls on Sunday, the following Monday will be excluded.

**Item 15 – For rules and regulations and rates specifically governing lumber vessels discharging at the Castle Island Terminal see Wiggin Terminals' F.M.C. Lumber Tariff. Wiggin Terminals' F.M.C. Lumber Tariff is only applicable on those vessels discharging lumber which is backhauled by Wiggin Terminals, Inc., at Castle Island.

Item 16 – Intentionally left blank.

Item 17 – Intentionally left blank.

Item 18 – Intentionally left blank.

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: – December 21, 1964

Effective: – January 21, 1965

First Revised Page No. 14
F.M.C. T-No. 1
(Cancels Original Page No. 14)

RULES AND REGULATIONS (CONTINUED)

Item 14 – FREE TIME (Continued)

Exception:

Woodpulp, when unloaded from vessels at Mystic and Hoosac, Pier 51, and New York Central Terminals, and when inland movement from pier is by rail, may remain on the pier for fifteen (15) days after the vessel completes discharging without wharf demurrage charges.

B – Export Cargo:

Cargo may be assembled on the pier for export to foreign or domestic ports free of wharf demurrage charges for seven (7) days before the vessel commences to load.

*C – Free time will be computed from 8:00 A.M., on the first day after vessel completes discharge, or from 8:00 A.M., on the first day after cargo arrives for delivery to vessel. In computing free time, Saturdays, Sundays, legal holidays (Item 4 – Section I), strike storage days (Item 4-E, Section III) will be excluded. When a holiday falls on Sunday, the following Monday will be excluded.

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Item 18 – Intentionally left blank.

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: – November 18, 1964

Effective: – December 18, 1964

Original Page No. 14
F.M.C. T-No. 1

RULES AND REGULATIONS (CONTINUED)

Item 14 – FREE TIME (Continued)

Exception:

Woodpulp, when unloaded from vessels at Mystic and Hoosac, Pier 51, and New York Central Terminals, and when inland movement from pier is by rail, may remain on the pier for fifteen (15) days after the vessel completes discharging without wharf demurrage charges.

B – Export Cargo:

Cargo may be assembled on the pier for export to foreign or domestic ports free of wharf demurrage charges for seven (7) days before the vessel commences to load.

C – Free time will be computed from 8:00 A.M., on the first day after vessel completes discharge, or from 8:00 A.M., on the first day after cargo arrives for delivery to vessel. In computing free time, Saturdays, Sundays, and Legal Holidays (Item 4 – SECTION I), will be excluded. When a holiday falls on Sunday, the following Monday will be excluded.

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Item 16 – Intentionally left blank.

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Issued: –
June 15, 1962

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Effective: –
July 1, 1962

Original Page No. 15
F.M.C. T-No. 1

CHARGES

Item 1 – DOCKAGE

A – Cargo not otherwise specified, discharged from and/or loaded on vessels; per ton of 2,000 lbs., or 40 cubic feet, as determined from vessel's manifest. (See Note and Exception.) $ .20

Note:

When merchandise is carried on a package basis on vessel's manifest, the charges for computing dockage revenue will be based on weight per ton of 2,000 lbs., or per 40 cubic feet, whichever yields the greater revenue.

B – Minimum charge per designated berth for each day or portion thereof a vessel occupies a berth or portion thereof. (See Exception.) $100.00

C – Lumber (applies at Castle Island Terminal only) handled to open space in accordance with Wiggin Terminals' Lumber Tariff in effect, as determined by vessel's manifest, per 1,000 net board feet. $ .20

D – A Dockage Day will consist of 24 hours, or fraction thereof, commencing at the time the vessel is berthed, including Saturdays, Sundays, and holidays.

Exception:

No dockage charge will be assessed on Bulk Grain or Soya Beans delivered from Grain Elevators. When vessel loads or discharges general cargo at the same berth while loading bulk grain or soya beans from Grain Elevators, dockage charges will be assessed on the general cargo as provided in Paragraph "A" above, and the provisions in Paragraph "B" above will not apply.

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Issued: – June 15, 1962

Effective: – July 1, 1962

First Revised Page No. 16
F.M.C. T-No. 1
(Cancels Original Page No. 16)

CHARGES (CONTINUED)

Item 2 – WHARFAGE (See Exception)

*A – Wharfage charges are due when rendered. The Terminal at its discretion may refuse delivery of cargo until all charges are paid, including wharf demurrage charges which may accrue because of holding cargo.

B – Cargo (including ballast) not otherwise specified, per ton of 2,000 lbs. $1.75

C – Cargo interchanged overside between vessels and lighters, or handled direct from vessel to truck, or from truck to vessel, per ton of 2,000 lbs. $ .87½

D – Lumber (See Note 2) handled to open space in accordance with Wiggin Terminals' Lumber Tariff in effect, (as determined by vessel's manifest), per 1,000 net board feet. $ .45

E – Cargo trans-shipped between water carriers using participating Terminals, per ton of 2,000 lbs. at each Terminal used. $1.00

F – Minimum Charge per shipment. $1.75

Minimum charges must be paid before removal of cargo from pier.

Exception:

*Naphtalene in freight cars; Bunker Coal; Fuel Oil; Ship's Stores; Freight handled direct from vessel to car or from car to vessel; Freight arriving at or leaving from Terminal in railroad cars, from or to points located outside the Boston Switching District. (See Note 3). N.C.

* * * Note 1:

(Item 2 continued on next page)

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: – December 21, 1964

Effective: – January 21, 1965

Original Page No. 16
F.M.C. T-No. 1

CHARGES (CONTINUED)

Item 2 – WHARFAGE (See Exception)

A – Wharfage charges are due when rendered. The Terminal at its discretion may refuse delivery of cargo until all charges are paid, including wharf demurrage charges which may accrue because of holding cargo. (See Note 1.)

B – Cargo (including ballast) not otherwise specified, per ton of 2,000 lbs. $1.75

C – Cargo interchanged overside between vessels and lighters, or handled direct from vessel to truck, or from truck to vessel, per ton of 2,000 lbs. $ .87½

D – Lumber (See Note 2) handled to open space in accordance with Wiggin Terminals' Lumber Tariff in effect, (as determined by vessel's manifest), per 1,000 net board feet. $ .45

E – Cargo trans-shipped between water carriers using participating Terminals, per ton of 2,000 lbs. at each Terminal used. $1.00

F – Minimum Charge per shipment. $1.75

Minimum charges must be paid before removal of cargo from pier.

Exception:

Naphthalene in freight cars; Bunker Coal; Fuel Oil; Ship's Stores; Freight handled direct from vessel to car or from car to vessel; Freight handled by rail to or from points located outside the Boston Switching District. (See Note 3.) N.C.

Note 1:

Wharfage assessed on cargo moved on an inland movement by the New York, New Haven & Hartford Railroad will be credited to the consignee, less any charges for wharf demurrage or any other charges which may have accrued.

(Item 2 continued on next page)

Issued: –
June 15, 1962

Issued by
Sherman L. Whipple
Chairman
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Boston 29, Mass.

Effective: –
July 1, 1962

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CHARGES (CONTINUED)

Item 2 – WHARFAGE (Continued)

Note 2:

Applies only at Castle Island Terminal.

Note 3:

The Boston Switching District comprises the corporate limits of the following cities of The Commonwealth of Massachusetts: – Boston, Chelsea, Cambridge, Revere, Medford, Somerville, and Everett.

G – The shipper of export cargo or the consignee of import cargo is responsible for the payment of the wharfage charge. The Terminal may arrange with vessels, agents or other parties for the collection of these charges, which shall be remitted to the Terminal. The collecting agent may retain a commission of 10 per cent.

Item 3 – PASSENGER CHARGES:

A – Passengers embarking or disembarking – per passenger	$ 1.00
B – Passenger gangways and baggage conveyors where available:	
Aluminum Gangways per request – each	$25.00
Wooden Gangways per request – each	$10.00
Baggage Conveyors per request – each	$10.00

Item 4 – WHARF DEMURRAGE

A – Cargo, not otherwise specified, per 100 lbs. (Except Lumber as referred to in Item 1, Paragraph "C", Page No. 15.) – Per Day	$ .02½
B – Export Cargo (Except Grain):	
For the first ten (10) days or fraction thereof per 100 lbs.	$ .06½
For each succeeding ten (10) days or fraction thereof, per 100 lbs.	$ .02½

(Item 4 continued on next page)

Issued: –
June 15, 1962

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Effective: –
July 1, 1962

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(Cancels Second Revised Page No. 18)

CHARGES (CONTINUED)

C – Minimum charge per shipment, per day. $ 1.50

Minimums must be paid before shipments can be moved from the Terminal.

Item 4 – WHARF DEMURRAGE (Continued)

D – Wharf Demurrage will be assessed against the consignee of import cargo or the shipper of export cargo as shown on the original manifest or bill of lading. The Terminal may refuse delivery of cargo on wharf demurrage until all wharf demurrage charges are paid.

E – Now Item 10, Page 20.

F – The shipper or export cargo or the consignee of import cargo is responsible for the payment of Wharf Demurrage charges.

G – In computing Wharf Demurrage charges, Saturdays, Sundays, and legal holidays (Item 4, Section I) will be included. Any fractional part of one hundred (100) lbs. will be computed as one hundred (100) lbs., and any fractional part of twenty-four (24) hours will be computed as one (1) day.

Item 5 – USAGE CHARGE

A – Applies only at Castle Island, South Boston Army Base, and Commonwealth Pier No. 5.

B – When the inland movement is by railroad, the New York, New Haven & Hartford Railroad Company will pay to the Terminal fifteen (15) cents per ton of 2,000 lbs., on all cargo moved to or from the pier as compensation for the use of the tracks, sheds, and other facilities.

Item 6 – WATER, WHEN AVAILABLE

A – Per one hundred (100) cubic feet $ .25

B – Minimum charge per delivery $30.00

C – Service charge per delivery on straight-time $10.00

(Item 6 continued on next page)

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: – December 21, 1964

Effective: – January 21, 1965

Second Revised Page No. 18
F.M.C. T-No. 1
(Cancels First Revised Page No. 18)

CHARGES (CONTINUED)

Item 4 – WHARF DEMURRAGE (Continued)

D – Wharf Demurrage will be assessed against the consignee of import cargo or the shipper of export cargo as shown on the original manifest or bill of lading. The Terminal may refuse delivery of cargo on wharf demurrage until all wharf demurrage charges are paid.

*E – Strike storage, assessed on cargo prevented from removal from the Terminal will be assessed to the vessel when the vessel's employees, or employees of the agent of the vessel, or firms employed by either the agent or the vessel are on strike.

Per 100 lbs. per day for each day during which the failure of the vessel to deliver or load exists. $ .005

When removal of cargo is prevented by strike of Terminal employees no strike storage will be assessed during the period the situation exists.

F – The shipper of export cargo or the consignee of import cargo is responsible for the payment of Wharf Demurrage charges.

G – In computing Wharf Demurrage charges, Saturdays, Sundays, and legal holidays (Item 4, Section I) will be included. Any fractional part of one hundred (100) lbs. will be computed as one hundred (100) lbs., and any fractional part of twenty-four (24) hours will be computed as one (1) day.

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Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Issued: – November 18, 1964

Effective: – December 18, 1964

First Revised Page 18
F.M.C. T-No. 1
(Cancels Original Page No. 18)

CHARGES (CONTINUED)

Item 6 – WATER, WHEN AVAILABLE

A – Per one hundred (100) cubic feet	$ .25
B – Minimum charge per delivery	$30.00
C – Service charge per delivery on straight-time	$10.00

Item 4 – WHARF DEMURRAGE (Continued)

D – Wharf Demurrage will be assessed against the consignee of import cargo or the shipper of export cargo as shown on the original manifest or bill of lading. The Terminal may refuse delivery of cargo on wharf demurrage until all wharf demurrage charges are paid.

*E – Wharf Demurrage assessed on cargo prevented from removal from the Terminal will be assessed to the vessel when the vessel's employees, or employees of the agent of the vessel, or firms employed by either the agent or the vessel, are on strike.

– Per 100 lbs. per day for each day after expiration of free time that the situation exists. $ .005

When removal of cargo is prevented by strike of Terminal employees no Wharf Demurrage will be assessed.

F – The shipper of export cargo or the consignee of import cargo is responsible for the payment of Wharf Demurrage charges.

G – In computing Wharf Demurrage charges, Saturdays, Sundays, and Legal Holidays (Item 4, Section I) will be included. Any fractional part of one hundred (100) lbs. will be computed as one hundred (100) lbs., and any fractional part of twenty-four (24) hours will be computed as one (1) day.

Item 5 – USAGE CHARGE

A – Applies only at Castle Island, South Boston Army Base, and Commonwealth Pier No. 5.

B – When the inland movement is by railroad, the New York, New Haven & Hartford Railroad Company will pay to the Terminal fifteen (15) cents per ton of 2,000 lbs. on all cargo moved to or from the pier as compensation for the use of the tracks, sheds, and other facilities.

Issued: –
September 15, 1964

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Effective: –
September 30, 1964

Original Page No. 18
F.M.C. T-No. 1

CHARGES (CONTINUED)

Item 6 – WATER, WHEN AVAILABLE

A – Per one hundred (100) cubic feet	$ .25
B – Minimum charge per delivery	$30.00
C – Service charge per delivery on straight-time	$10.00

Item 4 – WHARF DEMURRAGE (Continued)

D – Wharf Demurrage will be assessed against the consignee of import cargo or the shipper of export cargo as shown on the original manifest or bill of lading. The Terminal may refuse delivery of cargo on wharf demurrage until all wharf demurrage charges are paid.

E – Cargo prevented from removal by factors beyond consignee's control such as strikes, weather conditions, or similar situations affecting the entire Port area:

Per 100 lbs. per day for each day after expiration of free time that the situation exists. $ .01

F – The shipper of export cargo or the consignee of import cargo is responsible for the payment of wharf demurrage charges.

G – In computing wharf demurrage charges, Saturdays, Sundays, and Legal Holidays (Item 4, Section I) will be included. Any fractional part of one hundred (100) lbs. will be computed as one hundred (100) lbs., and any fractional part of twenty-four (24) hours will be computed as one (1) day.

Item 5 – USAGE CHARGE

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A – Per one hundred (100) cubic feet.	$ .25
B – Minimum charge per delivery	$30.00
C – Service charge per delivery on straight-time	$10.00

(Item 6 continued on next page)

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Issued: –
June 15, 1962

Effective: –
July 1, 1962

Original Page No. 19
F.M.C. T-No. 1

CHARGES (CONTINUED)

Item 6 – **WATER, WHEN AVAILABLE** (Continued)

D – Special arrangements for delivery of water on overtime periods must be made with the Terminal.

E – At the Boston Army Base, water will be supplied and charged for by the Post Engineer, at the rates given above, or at the prevailing applicable rate of the City of Boston, whichever is greater.

Item 7 – **ELECTRICITY, WHEN AVAILABLE**

A – Lights, per berth:		Half Night	$15.00
		Whole Night	$20.00
B – Electric Power supplied:		Per K.W.H.	$ .06
		Minimum Charge	$10.00
C – Castle Island	Half Night	Per Tower	$ 5.00
	Whole Night	Per Tower	$ 7.50

Item 8 – **DEPARTMENT OF THE ARMY CARGO**

Wharfage and wharf demurrage charges applicable to all Department of the Army cargo discharged from or loaded to water carriers at the Boston Army Base Terminal.

Per ton of 2,000 lbs., or per 40 cubic ft., whichever yields the greater revenue. $ .34

Item 9 – **GANTRY CRANES**

A – Applies only at Boston Army Base.

B – When available, gantry cranes will be charged to the user (excluding operator): Per Hour $15.00
Minimum Charge $25.00

C – When gantry cranes are used, the user will be charged for one (1) standby electrician for each crane, at cost.

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Issued: – June 15, 1962

Effective: – July 1, 1962

First Revised Page No. 20
F.M.C. T-No. 1
(Cancels Original Page No. 20)

CHARGES (CONCLUDED)

Item 10 – SPECIAL CHARGES

The Terminal will arrange with the vessel for special charges to cover unusual conditions prevailing at a berth, whenever the occasion arises. The same charges would be made to all under similar conditions.

**Item 11 – STRIKE STORAGE

Strike storage assessed on cargo prevented from removal from the Terminal will be assessed to the vessel when the vessel's employees, or employees of the agent of the vessel, or firms employed by either the agent or the vessel are on strike.

Per 100 lbs. per day for each day during which the failure of the vessel to deliver or load exists. $ .005

When removal of cargo is prevented by a strike of Terminal employees, no strike storage will be assessed during the period in which the situation exists.

Item 12 – Intentionally left blank.

THE END

Issued: –
December 21, 1964

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston, Mass. 02129

Effective: –
January 21, 1965

CHARGES (CONCLUDED)

Item 10 – SPECIAL CHARGES

The Terminal will arrange with the vessel for special charges to cover unusual conditions prevailing at a berth, whenever the occasion arises. The same charges would be made to all under similar conditions.

Item 11 – Intentionally left blank.

Item 12 – Intentionally left blank.

THE END

Issued: –
June 15, 1962

Issued by
Sherman L. Whipple
Chairman
50 Terminal Street
Boston 29, Mass.

Effective: –
July 1, 1962

If additional copies of this tariff are requested they may be obtained by sending $1.00 per copy to the above issuing agent.

3. *Strike Storage Charges*

Exhibit C to Petition for Declaratory Judgment [Appendix, Vol. I, p. 12]

Plaintiff	Defendant	Amount
Massachusetts Port Authority	Peabody & Lane, Inc.	$ 108.76
	Boston Shipping Corp.	306.45
	American President Lines	1,921.15
	Furness, Withy & Co.	1,200.00
Mystic Terminal Co.	American Export Lines, Inc.	404.23
	Boston Shipping Corp.	328.28
	Furness, Withy & Co.	8,765.01
	Moore-McCormack Lines, Inc.	3,086.52
	Moran Shipping Agencies, Inc.	860.89
New York Central Railroad Co.	United States Lines	2,985.20
	Farrell Lines	1,550.40
Port Terminals, Inc.	Sprague Steamship Agency, Inc.	4,548.06
	J. F. Moran & Co.	1,158.63
	Peabody & Lane, Inc.	1,417.68
	Norton, Lilly & Co.	1,380.39
Wiggin Terminals, Inc.	Norton, Lilly & Co.	3,756.39
	Patterson, Wylde & Co.	2,890.80

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4. *Federal Maritime Commission Decision—Docket No. 66-28*

Exhibit A to Stipulation of Facts between plaintiffs and defendants [Appendix, Vol. I, p. 33]

Exhibit J to Stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix, Vol. I, p. 36]

FEDERAL MARITIME COMMISSION

No. 66-28

THE BOSTON SHIPPING ASSOCIATION, INC., et al.

v.

PORT OF BOSTON MARINE TERMINAL ASSOCIATION, et al.

Decided June 23, 1967

Assessment of "strike storage" charges for cargo remaining on premises of terminal during longshoremen's strike is subject to the jurisdiction of the Commission as a practice within the meaning of section 17 of the Shipping Act, 1916.

A change in the terminal tariff rule governing the assessment of "strike storage" which shifted charge from cargo to vessel did not require prior approval by the Commission under section 15, Shipping Act, 1916, where rule is contained in a tariff filed with the Commission under an existing approved section 15 agreement, such change constituting neither a modification to the already approved basic agreement nor a new agreement within the meaning of section 15.

The assessment of the "strike storage" against the vessel for cargo still in "free time" when the strike begins does not constitute an unjust and unreasonable practice within the meaning of section 17, Shipping Act, 1916.

While the assessment by a terminal of a charge against the vessel for services rendered to the cargo for benefit of the consignee raises issues under section 17 as to the justness and reasonableness of the allocation it does not constitute an undue or unreasonable prejudice under section 16 since the cargo and vessel are not users of the same service.

Cargo of the consignees was "prevented from removal" within the meaning of the strike storage provision of respondents' tariff by the longshoremen's strike and the application of that provision for the period in question did not constitute an unjust and unreasonable practice within the meaning of section 17, Shipping Act, 1916.

Leo F. Glynn, Esq., attorney for the complainants.

John M. Reed, Esq., attorney for respondents other than Massachusetts Port Authority.

George W. Stuart, Esq. and *Neil L. Lynch, Esq.*, attorneys for Massachusetts Port Authority.

Donald J. Brunner, Esq. and *Samuel B. Nemirow, Esq.*, Hearing Counsel.

REPORT

BY THE COMMISSION (John Harllee, *Chairman;* Ashton C. Barrett, *Vice Chairman;* James V. Day, George H. Hearn, *Commissioners*)*

This proceeding arises out of a complaint filed April 21, 1966, by the Boston Shipping Association. Hearings were held before Examiner Benjamin A. Theeman who issued his decision February 17, 1967. Oral argument was held May 11, 1967. The complainant, the Boston Shipping Association, Inc., is a nonprofit Massachusetts corporation, whose members are ocean steamship companies, their agents, or stevedores, while the respondent (PBMTA) is an association of "other persons" subject to the Shipping Act, 1916, each of which owns or operates a marine terminal in connection with a common carrier by water. The complainant alleges that respondent has violated section 15 of the Act by putting certain tariff modifications into effect without first securing the approval of the Commission, and sections 16 and 17 of the Act by unjustly assessing against the vessel the charge for so-called "strike

* Commissioner Fanseen did not participate.

storage" of cargo during strikes of the vessel employees instead of assessing it to the cargo as had previously been the practice. The Examiner found violations of sections 16 and 17, but not section 15. Respondent and intervenor hearing counsel have taken exception to the Initial Decision and complainant has replied. Our conclusions differ somewhat from those of the Examiner.

FACTS

Respondent PBMTA operates under approved Agreement No. 8785, Article Third of which provides that the agreement authorizes the fixing of rates and charges for wharfage, dockage, free time, wharf demurrage, and all terminal facilities and services. Article Sixth of the agreement provides that rate charges, classifications, rules and regulations adopted under the agreement and any additions or changes in them will be promptly filed with the Commission.

Pursuant to Agreement No. 8785, PBMTA issued Terminal Tariff No. 1, effective July 1, 1962. This tariff provided, among other things, for wharfage,[1] wharf demurrage,[2] dockage,[3] and free time.[4] It contained no provision

[1] The term "wharfage refers to the charge assessed against all cargo passing or conveyed over, onto or under wharves or between vessels or overside vessels when berthed at pier or wharf. Wharfage is solely the charge for use of pier or wharf and does not include charges for any other service."

[2] The term "wharf demurrage refers to the charge assessed against cargo remaining on a pier or wharf after the expiration of free time."

[3] The term "dockage refers to the charge assessed for the service of providing space alongside of wharf, pier or seawall structure for the docking or berthing of watercraft, or for the mooring thereof, or other watercraft docked."

[4] The term "free time refers to the period which cargo is allowed to remain on a pier free of charge, immediately prior to loading of the vessel or subsequent to its discharge from a vessel."

specifically dealing with strike storage. Under the tariff as originally filed, dockage was assessed against the vessel on general cargo at 20 cents a ton; wharf demurrage was assessed on import cargo at 2½ cents per 100 pounds per day. Free time of 5 days was allowed on import cargo, and 7 days allowed on export cargo. There is no issue presented as to the reasonableness of these periods.

When cargo was "prevented from removal by factors beyond the consignees' control such as strikes, weather conditions, or similar situations affecting the entire Port area" wharf demurrage was assessed on cargo at a reduced rate of 1 cent per 100 pounds per day.[5] All the services at the terminals operated by respondents were governed by these provisions and subsequent amendments made during the period of record.

Ocean freight rates on general cargo into the Port of Boston cover transportation from a place of rest to a place of rest which is generally a point and a place in a designated area inside the pier shed to which cargo is removed from where it has been landed under ship's hook. It is the vessel's obligation to move the cargo to the place of rest. This is accomplished by stevedoring companies performing under contract with the vessels and under the direction of the chief clerk, an employee of the vessel. The longshoremen employees of the stevedore and the clerks belong to union locals affiliated with the ILA.

On inbound shipments, the vessel sends an arrival notice to the consignee who usually receives it the morning the

[5] The terminal tariff further provided that "When removal of cargo is prevented by strike of *terminal employees* no wharf demurrage will be assessed." (Emphasis ours.)

vessel docks, but in no event later than the time the vessel finishes unloading. The notice contains the date that free time will expire. The major portion of the cargo is picked up by the consignee during free time. The usual procedure is for a truckman or a railroad freight handler on the consignee's behalf to arrive at the pier with an order for the cargo; the cargo is tallied by a clerk, an employee of the vessel; and while being tallied, the cargo is loaded by the consignee's representatives, one of whom signs the tally. The procedure is reversed but substantially similar in the case of export cargo. Wharf dumurrage is assessed against the consignee for cargo left on the pier after free time expires. In some instances, cargo in demurrage is not moved from the place of rest. In others, the terminal moves the cargo to another area of the terminal to place it in demurrage or storage.

Each of the complainants enjoys the continuous or exclusive use of an assigned pier for the berthing of its vessels. Before all the cargo unloaded from one vessel is delivered or removed from the pier, another vessel will have berthed and unloaded its cargo. This process is repeated as succeeding vessels unload. Thus, there regularly exists on the pier a mix of general cargo in different stages of discharge and delivery, some in free time and some in wharf demurrage. Because of this, complainants do not consider that their responsibility toward the cargo on their piers ends at the expiration of free time. Rather, they believe that they should use average care to see that cargo is delivered in the same condition in which it was received. Complainants employ watchmen to guard against such things as pilferage, and complainants insure the cargo while it is on their piers. Complainants consider delivery takes place when they receive a signed receipt of some kind from the party that next takes over the cargo. The record reveals

that complainants consider that when this occurs, their obligation ceases.[6]

The terminal maintains guards to police the terminals, and service employees for the upkeep and maintenance of the terminal piers and premises. Both the terminal's guards and the complainant's watchmen belong to unions not affiliated with the ILA.

In August of 1964, PBMTA received a letter from one of its members, the Massachusetts Port Authority, stating in part:

> Over the years terminal operators and the Port of Boston have been severely criticized by consignees of import cargo or the shippers of export cargo when wharf demurrage charges are assessed during strike periods. Many times, it seems almost useless to advise them that a reduction in charges is established in the tariff for that purpose.

Shortly after this letter, PBMTA decided to reduce wharf demurrage to ½ cent per 100 pounds per day and to assess it against the vessel instead of the consignee. In September 1964, BSA found out about the proposal to shift the charge to the vessel and protested by telegram to PBMTA. In the next few months, two or three meetings took place, which ended with the parties still at odds. PBMTA told BSA that it would continue to assess the charge against the vessel and that if there was any complaint to file it here with the Commission. BSA's reply was that it would not pay the charge. A longshoremen's strike that had been brewing for about a month in the Port of Boston commenced on September 30, 1964. Tally clerks and other clerks of the BSA also struck. On November 18, 1964, wharf demurrage assessed against the vessel for

[6] Other common carriers in Boston whose schedules provide only an occasional call at a particular pier operate differently and discharge at the pier ends their operation there. Cargo left on the pier at the end of free time would be turned over to the terminal for storage.

cargo remaining on the pier during a strike of the vessel's employees or employees of the agent of the vessel was renamed "strike storage." On December 21, 1964, this "strike storage" charge was eliminated from the wharfage section of the tariff and set aside as a separate item. On October 1, 1964, a court injunction stayed the strike, but it began again on January 11, 1965, and lasted 33 days. During this time, truckmen and railroad men representing the consignees refused to enter the terminal and pick up cargo. All guards and watchmen remained on duty during the strike.

Pursuant to the tariff, strike storage was assessed against complainants. Upon refusal of complainants to pay the assessed charges, PBMTA brought an action in the U.S. District Court, District of Massachusetts. The Court stayed proceedings, holding that the matter was within the primary jurisdiction of the Commission. The present complaint resulted.

DISCUSSION

A. *Prior Approval of the Strike Storage Provision Under Section 15*

A threshold issue [7] to be disposed of before dealing with the validity of the strike storage charge under sections 16 and 17 is the question of whether the tariff revisions con-

[7] Taking the position that this is a ratemaking case, complainants also contended that we were without jurisdiction. They do not, however, challenge the level of the strike storage charge and their only concern is with its assessment against them. That the proper allocation of the costs of providing terminal services as between users of those services is a matter within our jurisdiction under section 17 is too well settled to be disputed now. *Practices, etc., San Francisco Bay Area Terminals*, 2 U.S.M.C. 588 (1941) aff'd *California v. U.S.*, 320 U.S. 577 (1944); *Free Time and Demurrage Charges—New York*, 3 U.S.M.C. 89 (1948).

taining the present strike storage rule required our approval under section 15 prior to their implementation. The Examiner found no merit in this contention of complainant and we agree.

Prior to the present rule, the tariff contained a provision providing for reduced "wharf demurrage" to be assessed against the cargo in the event removal of it was prevented by a strike. The present charge is in effect this same wharf demurrage though now called strike storage. Thus, the only real change effected by the controversial provision is the shift of the charge from cargo to vessel.

Approval of Agreement No. 8785, the basic agreement under which the terminals operate, assumed that the various costs of providing terminal services would be allocated as between users of those services. The authority granted under the agreement to jointly fix charges carried with it the continued authority to properly allocate those charges, and while a particular change in allocation may be an unreasonable practice under section 17 or unlawful under section 16 or some other section of the Act, it does not constitute a new agreement or a modification to the existing agreement calling for a new anti-competitive, monopolistic or rate-fixing scheme not contemplated in the original agreement. See *International Packers, Ltd. v. F.M.C.*, 356 F.2d 808, 810 (C.A.D.C. 1966); *Agreement No. 9025; Middle Atlantic Ports Dockage Agreement*, 8 F.M.C. 381, 384 citing *Empire State Highway Transportation Association v. Federal Maritime Board*, 291 F. 2d 336 (C.A.D.C. 1961) c.d. 368 U.S. 931 (1961). For changes outside the scope of approved agreements and needing prior approval, see those itms listed in *The Persian Gulf Outward Freight Conf. (Agr. 7700)—Establishment of a Rate Structure Providing for Higher Rate Levels for Service via American-Flag Vessels versus Foreign-Flag Vessels* . . . Docket 66-27—10 FMC 61; and the discussion on the subject in *Contract*

Between the North Atlantic Mediterranean Freight Conference and the United Arab Co. etc., Docket No. 66-3, 9 FMC 431. No prior approval under section 15 was required.

B. *The Allocation of the Strike Storage Charge Under Section 17*

As "other persons subject to [the Shipping] Act"[8] terminals are required by section 17 of that Act to establish "just and reasonable regulations and practices relating to or connected with the receiving handling or storing of property." We are authorized by section 17 whenever we find a regulation or practice to be unjust or unreasonable, to prescribe a just and reasonable one.

Terminal operators form an intermediate link between the carriers and the shippers or consignees. In consequence the terminal operators perform some services for the carriers and other services for the shippers. *Terminal Rate Increases-Puget Sound Ports*, 3 U.S.M.C. 21, 23 (1948). A just and reasonable allocation of charges under section 17 is one which results in the user of a particular service bearing at least the burden of the cost to the terminal of providing the service. *Practices, Etc. San Francisco Bay Area Terminals*, 2 U.S.M.C. 588 (1941) aff'd. *California v. United States*, 320 U.S. 577 (1944); *Investigation Free Time Practices-Port of San Diego*, 9 F.M.C. 525 (1966). Where the users of a particular service do not provide their share of essential terminal revenues a disproportionate share of the burden is unjustly and unrea-

[8] Section 1 provides:

"The term 'other person subject to this Act' means any person not included in the term 'common carrier by water' carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."

sonably shifted to users of other terminal services. *Practices, Etc., San Francisco Bay Area Terminals, supra,* see also Terminal *Rate Structure-California Ports,* 3 U.S.M.C. 57 (1948). In view of the multiplicity of methods used by terminal operators in furnishing facilities to carriers, shippers and consignees, it is essential, in considering whether a particular allocation or assessment is just and reasonable, to first determine for whom the service is performed. The necessary distinction to be made is between those services which are attributable to the transportation obligation of the carrier and those which are not, the latter normally being performed for the shipper or consignee. *Terminal Rate Increases-Puget Sound Ports, supra.* This, of course, involves a clear delineation of the obligations of the carrier to the shipper or consignee in performing its transportation service.

Complainants' simplistic characterization of a common carrier's duty as the "duty to carry" does not go far enough, and the carrier's obligation does not end with the deposit of the goods upon a "reasonable pier." The carrier must also "tender for delivery" which obligation requires that the carrier unload the cargo onto a dock, segregate it by bill of lading and count, put it at a place of rest on the pier so that it is accessible to the consignee and afford the consignee a reasonable opportunity to come and get it. *American President Lines, Ltd. v. Federal Maritime Board,* 317 F. 2d 887, 888 (D.C. Cir. 1962). Once this has been done, and absent a special contract, the carrier's transportation obligation is discharged.

In discharging its obligation to tender for delivery, the carrier must provide a convenient and safe place to receive the cargo from the shipper and for the consignee to accept delivery. *Terminal Rate Increases—Puget Sound Ports,* 3 U.S.M.C. 21 (1948). Thus, the carrier must provide adequate terminal facilities *Intercoastal Rates to and from*

Berkely, 1 U.S.S.B.B. 365 (1935), *Intercoastal Investigation 1935*, 1 U.S.S.B.B. 400 (1935). A carrier may not divest itself of this obligation, *Terminal Rate Increases—Puget Sound Ports, supra*, though it may contract for the facilities of another person such as a terminal operator in which case the terminal operator is in effect the agent of the carrier. *Free Time Practices—Port of San Diego*, 9 F.M.C. 525 (1966).

At Boston, "free time", or the period reasonably required to allow a consignee to pick up his cargo, appears in the respondent terminals' tariff and no comparable provision appears in the carrier's tariff. The piers and wharfs are actually provided by respondents. The obligation to provide free time and effective facilities to make that free time meaningful and realistic remains the carrier's. At Boston, the free time period is 5 days. Once the cargo has remained on the pier for these 5 days, the transportation obligation of the carrier is ended and the services performed by the terminal for the carrier are also at an end. Any other services performed by the terminal in receiving, handling, storing, or delivering the property are normally performed for the consignee or the shipper.

With the foregoing in mind, we move to a discussion of the application of the strike storage provision during the period in question. The strike storage rule clearly would apply to (1) cargo on the pier which is in free time when the strike begins; and (2) cargo which is on the pier in wharf demurrage when the strike begins.[9]

[9] The Examiner concluded that a broad reading of the rule could lead to its application to cargo the terminal had signed for and removed from the pier used by the vessel, presumably, to another pier, since strike storage is defined as a "charge assessed against cargo *on the pier* at the commencement of a strike." (Emphasis our.) We do not read the rule as applying to cargo removed from the pier by the terminal itself after it has signed for the cargo. In any event, as will appear later, an attempt to apply the rule to such cargo would, as respondents themselves appear to recognize, constitute a reasonable practice.

1. *Cargo in Free Time*

When the cargo is in free time, the terminal facility—the pier—is being provided by the terminal to the carrier so that the carrier may discharge its full transportation obligation to the consignee. It is the duty of the carrier to provide this service to the consignee and it has chosen to do so through an arrangement with the terminal. No one would argue that the carrier should pay the terminals' cost of providing the pier for the free time period itself. Why then should the consignee pay for the interim period of the strike? The Examiner would appear to conclude that the consignee should pay for two reasons (1) that "the terminal services rendered, that is, the supplying of the pier and the attendant services as well as the free time involved were being supplied to the cargo"; and (2) that "the reasons advanced by PBMTA for making the change [from consignee to vessel] were not valid."

That the services in question were supplied to the cargo is in one sense a valid statement. In transportation all the services, be it the actual carriage or the variety of attendant services, are performed for or supplied to the cargo, the ultimate object being to move the cargo from the point of origin to its ultimate destination. But the cargo cannot be divorced from the persons owing obligations to it. In the past when considering the proper allocation of terminal charges, it has been customary to divide terminal services into two general categories: those performed for the "vessel" and those performed for the "cargo". While we have no desire to change this customary usage, it must always be borne in mind that the cargo is not some separate entity which is itself capable of paying for services rendered. The charges must always be paid by some person

standing in a prescribed relationship to the cargo.[10] Thus, where the terminal is the intermediate link between the carrier and the shipper or consignee, one of these two persons must pay the terminal's cost of providing the services rendered. The question here is which of these two should pay the charge in issue.[11] We would place the burden upon him who at the time of the strike owes an undischarged obligation to the cargo. Thus, where the cargo is in free time and a strike occurs, it is the vessel which has yet to discharge its full obligation to tender for delivery and it is to the vessel that the terminal is at this point in time supplying the attendant facilities and services. It is therefore just and reasonable to require the vessel to pay the cost of the supervening strike which renders the discharge of that responsibility impossible.

After reviewing respondents' past practices under the old reduced wharf demurrage provision which governed charges for storage during a strike, the Examiner concluded that the reasons advanced by respondents for shifting these charges from the consignee to the vessel were invalid. Thus, in the Examiner's view, "The terminals are arbitrarily and unfairly charging the vessel strike costs • • • for services not rendered to them." Respondents contend that the Examiner has misconceived the past practice. We find it unnecessary to resolve this dispute.

We have already concluded that the charge in question was for a service rendered the vessel in order to allow the vessel to discharge its duty to tender for delivery. Therefore, the practice is a just and reasonable one under section 17. Its validity under section 17 is not affected by re-

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[10] We can only assume that convenience alone led to the substitution of "cargo" for the term "shipper or consignee" depending *inter alia* whether the shipment was outbound or inbound.

[11] No party to this complaint case has argued that the terminal itself should absorb the cost of providing strike storage and the record here is silent as to the terminal's ability to do so.

spondents' motives. A bad motive does not make a reasonable allocation unreasonable just as a good motive does not make an unreasonable allocation reasonable. The nature of the practice itself is of course controlling.

2. *Cargo in Demurrage*

Once free time has expired, the vessel's transportation obligation has ended. Absent a special contract, the carrier has done all that its transportation obligation requires it to do. Thus, in our view, it is only just and reasonable that the consignee, who has failed to avail himself of the opportunity to pick up his cargo during free time, should bear the risk of any additional charges resulting from a strike occurring after free time has expired. The fact that the carrier may remain liable for loss or damage to the cargo due to its own negligence. *American President Lines* v. *F.M.B.*, 317 F. 2d 887 (C.A.D.C. 1962) in no way relieves the consignee of its duty to pick up the cargo or bear those risks attendant to a failure to do so. Thus, we conclude that as to cargo which is in demurrage when the strike begins, it is an unjust and unreasonable practice within the meaning of section 17 to assess strike storage against the vessel.

C. *Application of the Strike Storage Rule as a Violation of Section 17*

The Examiner further concluded that the language of the strike storage itself rendered it inapplicable to the situation here in question. Pointing to the fact that under the rule itself, strike storage was assessable only on cargo "prevented from removal" by a strike, the Examiner found that "The refusal by consignee's employees was voluntary, and evidently was not pressed, possibly in order to avoid further complications and danger." The key to the Examiner's conclusion would seem to be his finding

that a "longshoremen's strike does not present a legal obstacle preventing the agents or employees of the consignee from picking up its cargo." [12]

To adopt the Examiner's conclusion is to place a strained and unnatural interpretation upon the language of the rule. As the Examiner himself points out, "The parties to this proceeding have been acting under the assumption that the longshoremen's strike prevented the consignee from receiving his cargo." Thus, only the Examiner has construed the language to mean "legal obstacle." Giving the language "the fair and reasonable construction required," *Thomas G. Crowe v. Southern S.S. Co.*, 1 U.S.S.B. at 147 (1929), we do not agree that the language "prevented from removal" means or was intended to mean "prevented from removal by a legal obstacle." We have long ago recognized the "physical and moral force of picket lines" and the impact of a strike which effectively prevents consignees from removing their shipments," [sic] *Free Time and Demurrage Charges—New York*, 3 U.S.M.C. 89 (1948).[13] When the truckers and railroad men upon whom the consignees must rely to pick up their cargo refuse to enter the terminal because of the longshoremen's strike, it can hardly be said that the consignee's "refusal" to pick up their cargo was "voluntary." We therefore conclude that the strike storage rule was applicable to the situation in issue and of itself did not constiute an unreasonable practice under section 17.

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[12] The Examiner cited section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act and certain cases dealing with "secondary boycotts" in support of this conclusion.

[13] That the *Free Time and Demurrage* case involved a trucker's strike as opposed to a longshoremen's strike is of no consequence to our conclusions here.

D. *The Assessment of Strike Storage Under Section 16 First*

There remains only the Examiner's conclusion that a violation of section 16 first had been committed. Citing only our recent decision in *Investigation of Free Time Practices—San Diego,* 9 F.M.C. 525 (1966), the Examiner concluded that the *San Diego* decision "would seem to make any undercharge or overcharge to any user, preferential or prejudicial * * *." To the Examiner, "It follows that a section 16 violation exists in the present instance since the vessel is being charged for a service to the cargo even though the cost allocation system under which the terminal operates has not been shown." The Examiner then suggests that we " * * * may wish to consider whether a distinction should be drawn between the *San Diego* case and the present one" insofar at least as *San Diego* would appear to apply to different classes of users of terminal services, *i.e.* between cargo and vessel.

The distinction to be drawn is not between the *San Diego* case and this one but between section 16 and 17.[14] The practice involved in *San Diego* was the granting of excessive free time to shippers and consignees. We discussed the validity practice under both sections 16 and 17. Under section 16, we stated that because the business practices of some shippers would not allow them to take advantage of the full free time granted, the ostensible offer to all shippers was illusory and the practice worked preference and prejudice within the meaning of section 16.[15] We further pointed out that the practice could be an unreason-

[14] The Examiner felt that "Under such circumstances, any distinction between section 16 and section 17 seems to be eliminated insofar as terminals are concerned."

[15] We also pointed out that because of the nature of the service free time or free storage, it was unnecessary to show any competitive relationship between particular shippers or consignees. See *e.g. New York Foreign Freight F. & B. Assn.* v. *F.M.C.,* 337 F. 2d 289 (1964).

able one under section 17 since by providing valuable services free or at reduced rates, the terminal was placing a disproportionate share of the burden of providing essential terminal revenues upon users of other services.

Thus, under section 16, there were two users of the same service—free time. In the present case, this ingredient is missing for the very question in issue is which of the two interests, cargo or vessel, is the actual user of the service in question. The distinction to be made is not between classes of users[16] but whether there are two interests seeking the same or substantially the same service. Here the service is for either the consignee or the vessel depending upon whether the particular cargo is in free time or demurrage. While the particular assessment of strike storage may result in an unreasonable practice under section 17, it does not in the situation at hand result in a violation of section 16.

On the basis of the foregoing, we conclude that the assessment of strike storage against the vessel for cargo on which free time has expired constitutes an unjust and unreasonable practice under section 17 of the Shipping Act, 1916, and respondents will be ordered to amend their strike storage rule accordingly.

By the Commission.

ORDER

The Commission has this day made and entered a report stating its findings and conclusions herein, which report is made a part hereof by reference, and

[16] We can for example see no reason for a terminal to charge say a shipper one rate for pure storage and carrier yet another rate for such storage.

It is ordered, That respondents herein shall amend their Terminal Tariff No. 1 in a manner not inconsistent with the Commission's decision herein.

By the Commission.

/s/ Thomas Lisi,
Secretary

[Seal]

10 F.M.C.

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5. *Judgment of United States Court of Appeals for the District of Columbia Circuit*

Exhibit D to Stipulation of Facts between plaintiffs and defendants [Appendix, Vol. I, p. 34]

Exhibit K to Stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix, Vol. I, p. 36]

[Filed March 18, 1968]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,305

September Term, 1967

The Boston Shipping Association, Inc., et al.,

Petitioner,

v.

Federal Maritime Commission and United States of America,

Respondents.

Port of Boston Marine Terminal Ass'n,
Massachusetts Port Authority,
The Mystic Terminal Company,
New York Central Railroad Company,
Port Terminals, Inc.,
Wiggin Terminals, Inc.,

Intervenors.

Petition for review of an order of the
Federal Maritime Commission

Before: Bazelon, Chief Judge; Fahy, Senior Circuit Judge; Leventhal, Circuit Judge

JUDGMENT

This cause came on to be heard on petitioners' petition for review of an order of the Federal Maritime Commission and the briefs filed by the respective parties, and the Court heard argument of counsel.

Upon consideration thereof and it appearing the petitioners' petition was not timely filed pursuant to Title 28 United States Code § 2344, it is

ORDERED AND ADJUDGED by this Court that this case is dismissed for lack of jurisdiction.

Dated: March 18, 1968. *Per Curiam*

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6. *Order of United States Court of Appeals for the District of Columbia Circuit*

Exhibit E to Stipulation of Facts between plaintiffs and defendants [Appendix, Vol. I, p. 34]

Exhibit L to Stipulation of Facts by plaintiffs, defendant and defendant-intervener [Appendix, Vol. I, p. 37]

UNITED STATES COURT OF APPEALS

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

(Title omitted in printing)

[Filed: April 25, 1968.]

Before: Bazelon, Chief Judge: Fahy, Senior Circuit Judge; and Leventhal, Circuit Judge, in Chambers.

ORDER

On consideration of petitioners' petition for rehearing, it is ORDERED by the Court that petitioners' aforesaid petition is denied.

Per Curiam.

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7. *Petition for Reconsideration by Federal Maritime Commission*

Exhibit F to Stipulation of Facts between plaintiffs and defendants [Appendix, Vol. I, p. 34]

Exhibit M to Stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix, Vol. I, p. 37]

Before the

FEDERAL MARITIME COMMISSION

THE BOSTON SHIPPING ASSOCIATION, INC., et. al.,
Complainants,

v. Docket No. 66-28

PORT OF BOSTON MARINE TERMINAL ASSOCIATION, et al.,
Respondents.

PETITION OF SWEDISH TRANSATLANTIC LINE * FOR RECONSIDERATION

Swedish Transatlantic Line hereby petitions this Commission to reconsider its decision in Docket 66-28 insofar as that decision held that an agreement among the members of the respondent Port of Boston Marine Terminal Association to assess strike storage charges against carriers serving the Port of Boston did not require approval under Section 15 of the Shipping Act, 1916. Reconsideration of this holding is requested because of the Supreme Court's subsequent decision in *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission,* 390 U.S. 261 (1968).

1. Swedish Transatlantic Line is a common carrier by water in foreign commerce which operates vessels to and from the Port of Boston. It is represented in Boston by its Agent, Furness, Withy & Co. Furness, Withy is a member of the Boston Shipping Association, Inc. (hereafter, the Shipping Association) which, with its member lines, filed the complaint in this proceeding.

2. The complaint charged that certain tariff provisions of the Port of Boston Marine Terminal Association, Inc. (hereafter "Marine Terminals"), and association of terminal operators, were in violation of Sections 15, 16, and 17 of the Shipping Act, 1916. Prior to the filing of the complaint, Marine Terminals had brought suit against Shipping Association and its member lines in the U.S. District Court for the District of Massachusetts for collection of charges under the disputed tariff provisions. The District Court stayed proceedings, holding that the suit raised issues within the primary jurisdiction of this Commission.

* A Swedish corporation whose registered name is Rederiaktiebolaget Transatlantic.

Pursuant to such stay, the Shipping Association filed this complaint.

3. The Commission held in this proceeding that, except for one provision,[1] the tariff items in dispute did not violate Sections 15, 16, and 17 of the Shipping Act.

Although the Commission's decision was served June 28, 1967, no further action has been taken in the district court since that case was stayed. Thus there is no court judgment respecting the sums claimed by Marine Terminals from Furness, Withy as agent of petitioner under the disputed tariff provisions, and these sums have not been paid.

4. The facts relevant to this Petition for Reconsideration are set forth in the Commission's report, and are as follows:

(a) Marine Terminals operates under Agreement 8785, approved by this Commission (9 S.R.R. at 288);
(b) Effective July 1, 1962, Marine Terminals issued a "terminal tariff";[2] this tariff provided a special rate for wharf demurrage when cargo could not be removed because of strikes. Under such "tariff", the demurrage charge was assessed *on the cargo* (9 S.R.R. at 288);
(c) Some time after August, 1964 and before November, 1964, the tariff was changed to provide that wharf demurrage would be assessed *against the vessel*, not the cargo. This change was protested by the Shipping

[1] That provision involved the assessment against the vessel of charges against cargo subject to demurrage when the strike begins, an assessment which the Commission found in violation of Section 17 of the Act.

[2] Such a tariff, of course, did not and does not have the force of law. It was filed with the Commission pursuant to a condition in Marine Terminals' approved agreement which required Marine Terminals to file its rates and regulations with the Commission.

Association, which never agreed to it. On November 18, 1964, this wharf demurrage charge was renamed a "strike storage" charge (9 S.R.R. at 290-91);

(d) A longshoremen's strike commenced on January 11, 1965 and lasted 33 days. Marine Terminals attempted to assess its strike storage charge against the member lines of the Shipping Association, who refused to pay. Marine Terminals then brought the suit referred to above (9 S.R.R. at 291).

5. One of the issues raised in this case was whether the agreement shifting liability from the cargo to the vessel was a new agreement among the members of Marine Terminals which required separate § 15 approval. The Commission held that it did not require such approval because "the authority granted under [Agreement 8785] to jointly fix charges carried with it the continued authority to properly allocate those charges, ... " (9 S.R.R. at 291-92).

6. When the Commission issued its report on this case, the Supreme Court had just granted a writ of *certiorari* in *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, to review the Court of Appeals' decision which had affirmed this Commission's decision in FMC Docket No. 1089, *Volkswagenwerk Aktiengesellschaft v. Marine Terminals Corporation*, 6 S.R.R. 685 (1965). On March 6, 1968, the Supreme Court issued its decision in *Volkswagenwerk*. That decision reversed the Court of Appeals and this Commission, and, in so doing, interpreted § 15 as requiring approval of agreements which this Commission had previously held did not require approval. The agreement involved in this case falls into that category, and the Commission's decision that the agreement did not re-

quire § 15 approval is contrary to and in conflict with the principles set forth in the *Volkswagenwerk* case.

7. In *Volkswagenwerk*, steamship carriers agreed on a method for assessing charges against themselves to finance a fund for longshoremen. The carriers involved belonged to the Pacific Maritime Association, an employer organization which negotiated contracts with labor unions. In one such labor contract, the Association agreed to create the fund; the agreement as to the method of assessment, however, was not part of the contract with the union. The Supreme Court held that the agreement allocating liability for contributions to the fund required § 15 approval, *whether or not either (a) the agreement creating the Association, or (b) the Association's agreement with the unions required such approval.* The Supreme Court said:

> "But the agreement with which we deal here—levying $29,000,000 over five years, binding all principal carriers, stevedoring contractors, and terminal operators on the Pacific Coast, and necessarily resulting in substantially increased stevedoring and terminal charges—was neither *de minimis* nor routine. We hold that this agreement was required to be filed under § 15 of the Act.
>
> "It is to be emphasized that the only agreement involved in this case is the one among members of the Association allocating the impact of the Mech Fund levy. We are not concerned here with the agreement creating the Association or with collective agreement between the Association and the ILWU. No claim has been made in this case that either of those agreements was subject to the filing requirements of § 15." (88 S. Ct. at 938).

8. It is certainly true that in this case, the agreement creating Marine Terminals, Agreement No. 8785, did require approval and was approved. It is likewise true that Agreement 8785 authorized the members to agree upon rates and charges. But Agreement 8785 did not authorize the parties to the agreement to shift wharf demurrage charges, historically and always a charge against the cargo, to a charge against the vessel. Indeed, Agreement 8785 did not empower the parties to create *any* liability of the vessel for "storage". Thus:

(a) The agreement provides:

> "THIRD: This agreement shall cover the following subject matters and all services, facilities, rates, and charges incidental thereto:— wharfage, dockage, free time, *wharf demurrage,* usage charges, passenger charges, water, electricity." (Emphasis supplied).

Pursuant to that agreement, and as set forth above, Marine Terminals published a "Tariff" establishing rates for "wharf demurrage", *as a charge against the cargo.*

(b) Very early decisions of the Commission's predecessor agencies established that wharf demurrage is a charge as against the cargo. *Storage of Import Property,* 1 U.S.M.C. 676-678 (1937); *Practices of San Francisco Bay Terminals,* 2 U.S.M.C. 588, 603, 609 (1941), aff'd., sub nom., *California v. United States,* 320 U.S. 577 (1944); *Terminal Rate Increases—Puget Sound Ports,* 3 U.S.M.C. 21, 24-25 (1948); *Terminal Rate Structure—California Ports,* 3 U.S.M.C. 57, 58, 60, 78 (1948); *Free Time and Demurrage Charges at New York,* 3 U.S.M.C. 89, 109 (1948). *Terminal*

Rate Structure—California Ports, supra, developed the well-known "Freas Formula"—a formula for allocating terminal costs as between cargo and vessel. All wharf demurrage costs were allocated to the cargo (3 U.S.M.C. at 78). The Freas Formula continues to be applied by this Commission, *e.g., Wharfage Charges on Bulk Grain—Pacific Ports,* 7 S.R.R. 353 (1965); *Pacific Northwest Tidewater Elevator Association,* 9 S.R.R. 427 (1967). The Commission has never held that wharf demurrage charges may be assessed against the carrier. On the contrary, the Commission said in *Terminal Rate Structure—Pacific Northwest Ports,* 5 F.M.B. 53, 59 (1956):

> "Under tackle to tackle rates, terminals may not assess charges against carriers for services performed or facility usage incurred prior to delivery within reach of ship's tackle or subsequent to delivery at the end of ship's tackle."

And in *Wharfage Charges on Bulk Grain—Pacific Ports, supra,* the Commission said (at 358):

> "Wharfage by definition is a charge against cargo for the use of terminal facilities."

Finally, this Commission's General Order 15 defines wharf demurrage as:

> "A charge assessed *against cargo* remaining in or on terminal facilities after the expiration of free time unless arrangements have been made for storage." (46 C.F.R. 533.6(d)(4); emphasis supplied).

(c) It is against this background that the members of Marine Terminals agreed to shift liability for "Wharf demurrage", accruing during longshoremen's strikes, from

the cargo interest to the vessel interest, and effectuated that agreement by a publication in their tariff. The members apparently realized the "striking" change they had effected in the historical allocation of terminal charges, for they sought to minimize that effect by renaming those wharf demurrage charges "strike storage charges", although their organizing agreement did not empower them to assess strike storage charges.

(d) Under the principles laid down in the *Volkswagenwerk* case, an agreement allocating liability is a different agreement from an agreement empowering an association to create liability. Thus whether or not the agreement authorizing an association to create liability requires approval *or* stands approved, the agreement allocating liability requires separate approval. The agreement in this case allowing Marine Terminals to create liability for wharf demurrage was Agreement 8785. Such liability is historically, and was under Marine Terminals' initial tariff, allocated 100% to the cargo and 0% to the vessel. The further agreement among the members of Marine Terminals to shift liability for wharf demurrage had the effect of reallocating liability from 100% to 0% as against the cargo and from 0% to 100% as against the vessel. A more radical reallocation could not have been achieved. The disparity between this agreement and the authorizing agreement is underscored by the fact that the shift in liability from cargo to vessel stands in derogation of every germane precedent —each of which explicitly places liability for demurrage on cargo rather than carrier. The Commission *must* have understood wharf demurrage as a cargo liability when it approved Agreement 8785 authorizing the parties thereto to fix rates and charges for wharf demurrage. It is thus clear that approval of Agreement 8785 provided no cover of authority for the allocation of wharf demurrage (under

whatever name) to carriers. Such allocation was first effectuated by the disputed tariff of Marine Terminals. Since that tariff constituted an allocation not previously approved, it fell squarely within the principle subsequently announced in *Volkswagenwerk,* and cannot lawfully be effectuated unless approval is conferred.

9. The Commission's Rules, 46 C.F.R. § 502.264 allow the filing of a petition for reconsideration within 30 days after service of the order except for "good cause". Since the basis of this petition is the *Volkswagenwerk* decision, and that decision was not rendered until nine months after the Commission's decision herein, this petition could not have been filed within 30 days. The timing of this petition does not prejudice the respondents, who have taken no action in the U. S. District Court on the subject matter of these proceedings since the Commission's decision was issued.

For these reasons, petitioner respectfully requests this Commission to reopen Docket 66-28, and to reconsider its decision insofar as that decision held that the agreement respecting "strike storage" charges did not constitute a separate agreement for which § 15 approval was required.

Respectfully submitted,
/s/ Amy Scupi
GEORGE F. GALLAND
AMY SCUPI
Galland, Kharasch, Calkins
& Lippman
1824 R Street, N. W.
Washington, D. C. 20009
Attorneys for
Swedish Transatlantic Line

September 4, 1968

[Certificate of Service]

8. *Letter from Thomas Lisi, Secretary, Federal Maritime Commission, to Mrs. Amy Scupi, dated October 8, 1968*

Exhibit G to Stipulation of Facts between plaintiffs and defendants [Appendix, Vol. I, p. 35]

Exhibit N to Stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix, Vol. I, p. 37]

October 8, 1968

Mrs. Amy Scupi
Galland, Kharasch, Calkins & Lippman
1824 R. Street, N. W.
Washington, D. C. 20009

Dear Mrs. Scupi:

At the direction of the Federal Maritime Commission, I am returning herewith your petition for reconsideration of the Commission's decision in Docket 66-28, filed on behalf of Swedish Transatlantic Line.

Inasmuch as the petition was not filed within the period specified in the Commission's Rules of Practice and Procedure, it is time barred.

Very truly yours,
/s/ Thomas Lisi
Secretary

Enclosure

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9. *Balances on Strike Storage Charges*

Exhibit O to Stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix, Vol. I, p. 37]

Current balances on strike storage charges:

Mystic Terminal Co.	American Export Line, Inc.	$ 404.23
	Furness, Withy & Co.	8,765.01
	Moran Shipping Agencies, Inc.	860.89
New York Central R.R. Co.	United States Lines	2,985.20
	Farrell Lines	1,550.40
Port Terminals, Inc.	J. F. Moran & Co.	1,158.63
Wiggin Terminals, Inc.	Norton, Lilly & Co.	1,943.04
Mass. Port Authority	Boston Shipping	806.45
	American President Lines	1,222.16

10. *Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference, Tariff No. 4 (Designated excerpts)*

Exhibit P to stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix Vol. I, p. 38]

"Balticwest" Tariff No. 4 — First revised page 1
Cancels Original page 1

• • • "Balticwest" Tariff No. 3

SCANDINAVIA BALTIC/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Agreement No. 9364

Members:

Finnlines

Moore-McCormack Lines

Swedish American Line

Swedish Transantlantic Line

Thorden Lines

[Cancelled February 23, 1965]

TARIFF NO. 4

Naming rates and conditions for westbound cargo from regular Swedish ports of loading either direct or transshipments to US North Atlantic ports

This Tariff is governed, except as otherwise provided herein, by Bill of Lading Tariff FMC No. 1.

RULES AND REGULATIONS

* * * * *

Application of rates

* * * * *

e) The rates in this Tariff are port to port rates as customary and unless otherwise specifically stated do not include terminal or any other charges that are for the account of the owner of the cargo.

11. *Swedish Lines Bill of Lading (designated excerpts)*

Exhibits Q to Stipulation of Facts by plaintiffs, defendants and defendant-intervener [Appendix, Vol. I, p. 38]

SWEDISH LINES BILL OF LADING Page 2

SWEDISH AMERICAN LINE B/L
Gothenburg, Sweden Reference No.

SWEDISH TRANSATLANTIC LINE
Gothenburg, Sweden

U.S. NORTH ATLANTIC SERVICE

* * * * *

In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations, exceptions and conditions, on both pages, whether written, printed, stamped or otherwise incorporated as fully as if they were all signed by the Merchant.

* * * * *

3. PERIOD OF RESPONSIBILITY. Goods in the custody of the Carrier or his Agents or servants before

loading and after discharge, whether being forwarde
or from the vessel or whether awaiting shipment, la
or stored, or put into bulk or craft belonging to the Ca
or not, or pending transshipment at any stage of the w
transport, are in such custody at the sole risk and exp
of the Merchant and thus the Carrier has no responsib
whatsoever for the goods, prior to the loading on and
sequent to the discharge from the vessel.

However, in case the contract evidenced by this Bil
Lading is subject to the U.S. Carriage of Goods by Sea
then the provisions stated in said Act shall govern bef
loading and after discharge and throughout the entire t
the goods are in the Carrier's custody.

* * * * *